ADM File No. 2005-04

Proposed Amendments of Rules
3.915, 3.963, 3.965, 3.966, 3.972, 3.973,
3.974, 3.975, 3.976, and 3.978 of the
Michigan Court Rules

Comments on the Proposed Amendments
by
Judge Donald S. Owens

Rule 3.963 Protective Custody of Child

(B) Court-Ordered Custody

(1)

Orders to take into temporary custody are typically sought by CPS workers or police officers. When it is necessary to forcibly enter a building to take a child into custody, the person sought to be authorized to do so is virtually always a police officer. Under the current rule, the court may authorize "an officer or other person" to take a child into custody. The proposed amendment would restrict the court's authority, is not required by any state or federal statute or regulation, and would give a CPS worker far too much authority, in that under the proposed amendment, a court could only authorize a "child protective services worker or designee" to take a child into custody, including forcibly entering premises. This means the CPS worker could designate anyone of his or her choice to carry out the order. That would delegate entirely too much authority to a CPS worker, in my opinion. I propose instead that the rule be amended as follows:

"The court may issue a written order authorizing a child protective service worker, an officer, or other person deemed suitable by the court, to immediately take a child into protective custody . . . ."

Rule 3.974 Post-Dispositional Procedures: Child at Home

(3)

I am very concerned about the proposed changes to this rule. I do not believe they are required by state or federal statute. However, I believe that these proposed changes may be harmful to children in that they may require a child to be abused or neglected again before the court may remove the child from his/her home, even though the child is already under the jurisdiction of the court following an adjudication for abuse or neglect.

Under the current rule, once a child is found to come within the jurisdiction of the court, the court has authority to place the child outside of his or her home or leave or return the child to his or her home, whichever the court finds to be in the child's best interest. If a court decides to place the child in his or her own home, notwithstanding the prior adjudication of abuse and neglect, the court currently has authority to remove the child should conditions start to deteriorate (parents disobey court orders, use drugs, etc.). The procedure in the current rule adequately safeguards the rights of all parties by not permitting a child to be removed for more than 24 hours, excluding Sundays and holidays, without a hearing (the Emergency Removal hearing) and not permitting the child to be removed for more than 14 days without a full dispositional review hearing at which all of the alternatives can be thoroughly explored.

The proposed rule change would delete the current procedure and instead require a supplemental petition to be filed and a preliminary hearing held in accordance with MCR 3.965. I have no objection to the use of a supplemental petition which would then be considered by the court at a dispositional review hearing using the evidentiary standards appropriate for such a hearing.

However, the proposed rule change would require a preliminary hearing under MCR 3.965. Under that rule, the court must advice the respondent of the right to trial, including jury trial (rather than a dispositional review hearing as in the present procedure). Furthermore, by incorporating the preliminary hearing rule, the supplemental petition could not be filed unless the court finds probable cause that "one or more of the allegations in the petition are true and fall within MCL 712A.2(b)."

In effect, this would be starting the case all over again in requiring that before a child already under the court's jurisdiction could be removed for the child's protection, the child must be abused or neglected to a level sufficient for original jurisdiction. In addition, a trial, including possibly a jury, would be required. Under the present rules, there is only one trial in a child protection case. That is the adjudication on the original petition which determines whether a child comes within the jurisdiction of the court. Once a child is within the jurisdiction of the court, any contested matters are dispositional and are subject to hearings, not trials.

The proposed procedure will make it much more difficult to protect children who have been returned home (or permitted to remain at home) and will

increase delay and cost. I am especially concerned that, knowing this, judges will be much more reluctant to return children home as early as they do now. They will want to wait until they are absolutely sure that the parents have been rehabilitated.

In summary, I do not believe we should make it so much harder to remove children once they have been found to come within the court's jurisdiction.

Rule 3.975 Post-Dispositional Procedures: Child in Foster Care

(H)

This subrule should not be deleted. The procedure is required by MCL 712A.19(10).

Rule 3.976 Permanency Planning Hearings.

(B)

(4)

This proposed change, which may be required by federal regulations, needs to be more specific. The proposed rule reads "the judicial determination to finalize the court-approved permanency plan must be made within the prescribed time limits." However, it does not indicate what those time limits are. Presumably, it refers to the time limits in subsections (1), (2), and (3) above. However, those are not time limits for a court to enter an order approving a permanency plan or even time limits for a court to decide to approve a permanency plan, but are merely time limits for when hearings must be held.